

Commonwealth of Pennsylvania
Public School Employees' Retirement System
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To: Bylaws/Policy Committee

From: Joseph E. Wasiak Jr., Deputy Executive Director of Administration

RE: Changes to the Ethics Policy

Date: November 19, 2018

The current Board Ethics Policy requires several amendments due to a numbers of factors. These include:

- the adoption of a Board policy on fraud, waste, and abuse,
- changes to the existing Board Education Policy,
- changes to the Governor's Code of Conduct, and
- the removal of the Office of Chief Counsel from the oversight of the Governor's Office of General Counsel.

Attached to this memorandum is a copy of Ethics Policy with the changes indicated in red. Overall, these changes are minor and do not significantly alter the intent or provisions of the original policy. They are listed in the following paragraph.

Page 10, Paragraph 3.I. Attendance at Functions.

- 1st Sentence: Replace the word "Contractors" with "any Person".
- Remove the last sentence that reads "The acceptance of an infrequent meal as part of a legitimate business meeting or conference would not be considered a Conflict of Interest."

Page 13, Paragraph 4.b. Training. Add the following sentence, "Trustees will comply with the provisions of the Education Policy, paragraph V.A. Annual Training Program, regarding ethics training." (This paragraph established the one hour of annual ethics training.)

Page 14, Paragraph 4.d. Incident Reporting.

-2nd Paragraph- Change the first sentence to read, "Misconduct by a Trustee shall be addressed in accordance with the Board's Fraud, Waste, and Abuse Reporting and Investigation Policy by the full Board."

--2nd Paragraph, 4th bullet, remove the words, "the Office of General Counsel,"

At the December 6, 2018 Bylaws/Policy Committee meeting we will present and discuss these changes. Afterwards the committee will vote to approve the changes. Please contact me with any questions you may have.

Ethics Policy
of
the Commonwealth of Pennsylvania
Public School Employees' Retirement Board

As adopted by
the Board of Trustees
on April 30, 2010
Effective July 1, 2010

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Public School Employees' Retirement Board Ethics Policy

PREAMBLE

WHEREAS, the Public School Employees' Retirement System (PSERS) provides pension and other benefits to public school employees in accordance with the Public School Employees' Retirement Code (Retirement Code);¹ and

WHEREAS, the Public School Employees' Retirement Board (PSERB) is empowered by the Retirement Code with the exclusive control and management of PSERS;² and

WHEREAS, the Trustees of the PSERB stand in a Fiduciary relationship to the members of PSERS with respect, *inter alia*, to the disbursement of any moneys from the Fund;³ and

WHEREAS, as fiduciaries, the Trustees of the PSERB have the duty to invest and manage the funds of the PSERS for the exclusive benefit of the members of the PSERS;⁴ and

WHEREAS, as fiduciaries, the Trustees of the PSERB also have a duty to invest and manage the funds of the PSERS with the care, skill and caution that a prudent investor would exercise under similar circumstances;⁵ and

WHEREAS, central to the fulfillment of their Fiduciary duties, is the obligation of the Trustees of the PSERB to maintain the highest ethical and Fiduciary standards as it serves the members of the System, including not only avoidance of actual impropriety, but also the perception of impropriety;

NOW THEREFORE, the Trustees of the PSERB establish the following Ethics Policy (Policy) to govern their conduct as more particularly set forth herein:

1. DEFINITIONS

¹ 24 Pa.C.S. §8101 *et. seq.*

² 24 Pa.C.S. §8521(a).

³ 24 Pa.C.S. §8521(e).

⁴ Rest. 3rd, Trusts (Duty of Loyalty) §170.

⁵ 24 Pa.C.S. §8521(a). Rest. 3rd, Trusts (Prudent Investor Rule) §227.

Unless the context clearly indicates otherwise, the following words and terms when used herein shall have the respective meanings defined as follows:

- a. Agent.** A Person, other than an Employee, who is authorized to act for another (the Agent's principal) through employment, by contract, or apparent authority, and receives compensation therefor.
- b. Board.** The Board of Trustees of the Public School Employees' Retirement System.
- c. Broker.** A Person who provides assistance in the buying or selling of stocks, bonds, commodities, options, and other securities, including related analysis or research, e.g., on a security, company, industry, or sector, and receives compensation therefor. If any question exists regarding who constitutes a Broker for purposes of this Policy, the Office of the Executive Director shall make that determination.
- d. Commonwealth.** The Commonwealth of Pennsylvania.
- e. Conflict or Conflict of Interest.** Use by a Trustee of the authority of his office or employment or of any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a De Minimis Economic Impact or Value which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group that includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.
- f. Consultant.** A Person, other than an Employee or Trustee who provides advice to PSERS and receives compensation therefor.
- g. Contractor.** A collective term that includes Agents, Brokers, Consultants, and Service Providers, as each separate term is defined herein and who provide goods and/or services to PSERS and receive compensation in exchange therefor.
- h. De Minimis Economic Impact or Value.** An economic consequence that is insignificant in its effect or is no greater than that which accrues to a large class or the general public.
- i. Employee.** A Person working for PSERS in an employer-employee relationship and not in an independent Contractor capacity, and includes both permanent and temporary salaried and wage positions.

j. Fiduciary. Of, relating to, or involving one that holds something in trust for another and who is charged with the duties of prudence and loyalty to the beneficiaries of the trust.

k. Fund. The Public School Employees' Retirement Fund.

l. Gift. Any payment, thing or other benefit provided to a Trustee for which the Trustee did not provide goods or services of equal or greater value, including a discount or a rebate that is not available to the general public. This does not include goods or services which are of De Minimis Economic Value.

m. Honorarium/Honoraria. Payment(s) made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services. The term does not include tokens presented or provided which are of De Minimis Economic Value.

n. Immediate Family. A parent, spouse, child, brother, or sister.

o. Kickbacks. Transactions where Persons seeking to do business with PSERS provide some personal benefit to a Trustee to influence a decision.

p. Office of the Executive Director. The Executive Director of PSERS, his immediate subordinates, (excluding his administrative staff) and designee(s) for performing specific duties under this Policy.

q. Pay-to-Play. A transaction where a Person provides a benefit unrelated to PSERS' business requirements to participate in a business process such as a bidding competition, or to influence a decision, or to maintain an existing contract or business association.

r. Person. A business, governmental body, individual, corporation, union, association, firm, partnership, limited liability company, committee, club, group of Persons or any other organization existing under the laws of any jurisdiction.

s. Policy. This Ethics Policy.

t. Political Contribution. Any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee made for the purpose of influencing any election in this Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election. This shall also include the purchase of tickets for events such as dinners, luncheons, rallies and all other fund-raising events; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the

same office; and any payments provided for the benefit of any candidate, including any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or a person whose expenditures the candidate or committee must report under this act. The word "contribution" includes any receipt or use of anything of value received by a political committee from another political committee and also includes any return on investments by a political committee.

u. PSERS. The Public School Employees' Retirement System.

v. Related Parties. Related Parties to Trustees include any child, step-child, foster child, grandchild, parent, step-parent, grandparent, spouse, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any member of the household, whether or not related. A Person adopted into a family is considered a relative on the same basis as a natural born family member.

w. Retirement Code. The Public School Employees' Retirement Code, 24 Pa.C.S. sections 8101-9102.

x. Service Provider. A Person, other than an Employee or Trustee who receives compensation in exchange for work performed for PSERS.

y. Trustee. A member of the Board and his or her designee(s).

z. Waste. Any conduct or omission that results in substantial abuse, misuse, destruction, or loss of funds or resources belonging to or derived from the Commonwealth or PSERS.

2. SCOPE OF POLICY

This Policy provides a framework for the ethical conduct of Trustees and a basis for the evaluation of that conduct. This Policy, however, should not be relied upon as an exclusive or comprehensive list of applicable legal, ethical or Fiduciary requirements of conduct for Trustees. It does not attempt to specify every possible activity that might be inappropriate or prohibited under applicable laws and regulations. Nothing in this Policy shall exempt any Trustee from any federal or Commonwealth law, regulation or policy. The standards of conduct set forth in this Policy are designed to supplement such laws, regulations or policies.

3. ETHICAL STANDARDS

a. General Rules

Trustees shall not engage in any employment, activity, or enterprise for compensation that is inconsistent with their Fiduciary duties or where the performance of their duties will be subject to improper influence or control by any other Person. Trustees should not engage in any other conduct that creates either an actual or the appearance of a Conflict of Interest.

As provided in the Bylaws, Section 5.11, Trustees must disclose in writing to the Board any Conflicts of Interest regarding any matter that is before the Board and must recuse themselves and not become personally involved in any aspect of the decision-making process relating to that matter.

b. Personal Interest in PSERS' Activities

Trustees may not have a financial or personal interest in PSERS' activities that conflicts with PSERS' interests or affects or appears to affect their independence, objectivity, or loyalty to PSERS. They cannot take any official action on matters that will result in a benefit to themselves, Immediate Family, or their business associates, unless such benefit is no greater than that which accrues to a large class, such as across-the-board retirement benefit increases.

c. Personal Interest in Outside Activities/Employment

Trustees may not have a financial or personal interest in activities outside of PSERS that conflicts with PSERS' interests or affects or appears to affect their independence, objectivity, or loyalty to PSERS. They may not borrow from Contractors unless such entities are normally engaged in such lending in the usual course of their business, and then only on customary terms offered to others under similar circumstances to finance proper and usual activities. They may not knowingly refer PSERS' members to a Contractor without the prior written approval of the Office of the Executive Director. Likewise, they may not knowingly refer a Contractor to a PSERS' member. Trustees also may not knowingly engage in outside employment with Contractors. Further, neither Trustees, their Immediate Family, nor their business associates may sell or provide goods or services to PSERS.

d. Financial Interests

Trustees shall abide by those provisions of the Governor's Code of Conduct, the Public Official and Employee Ethics Act, the Legislative Code of Ethics, and the Commonwealth Adverse Interest Act that are applicable to them and that prohibit Trustees from making, participating in making, or using their positions to influence Board and PSERS decisions in which they have a financial interest.

In addition, Trustees shall abide by the disclosure provisions of the Public Official and Employees Ethics Act and as applicable, the Governor's Code of Conduct.

e. Nepotism

To prevent Related Party Conflicts of Interest or the appearance of a Conflict of Interest, PSERS shall not employ a Person who is a Related Party to a Trustee. This rule shall not prevent the continued employment of a Person who has been employed by PSERS for thirty consecutive days prior to the date that a Trustee acquired his or her position, or the Related Party became a Related Party.

f. Hiring Contractors

To protect the integrity of the decision-making process, at such time as PSERS commences search procedures for the retention of a Contractor and identifies specific candidates to be interviewed to provide the desired goods and/or services, Trustees involved in the selection process shall refrain from knowingly having any contact with the candidates, their representatives, and supporters, other than unintended incidental interactions. Any questions from contractors shall be referred to the project manager of the contract.

All Trustees shall avoid any involvement in the decision-making process, particularly with respect to hiring, contracting, or investments that involve "Kickbacks" or "Pay-to-Play" practices.

Any violation of this Policy may result in the removal of such potential Contractor's proposal from consideration. If the violation is discovered subsequent to the award of the contract, the contract may be terminated.

g. Employment Negotiations and Post Employment Restrictions

A Trustee must disclose any employment negotiations with a Person that the Trustee is aware is a Contractor. Employment negotiations means participating in an employment interview, discussing an offer of employment, or accepting an offer of employment, even if precise terms of employment are not yet defined.

A Trustee, for one year after termination of his or her service on the Board, shall not appear before the Board in relation to any business dealing with PSERS. A Trustee shall not appear before the Board at any time in relation to any case, proceeding, determination or any other matter upon which he or she took any discretionary action during his or her term on the Board or employment with PSERS.

h. Gifts

Trustees shall comply with the provisions contained in §1103. Restricted Activities of the Public Official and Employee Ethics Act.

Trustees subject to the Governor's Code of Conduct shall comply with the provisions contained in Part 1, Paragraph 3.

Trustees subject to the Legislative Code of Ethics shall comply with the provisions of §143.5. Prohibitions.

Notwithstanding the above, Trustees shall not, directly or indirectly, solicit, accept or receive for themselves or another any Gift, whether in the form of money, gift certificates, service, loan, travel, gratuity, favor, Honoraria, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be considered that the Gift was intended, or could reasonably be expected, to influence them in the performance of their duties.

i. Political Contributions

A Trustee who has received a Political Contribution of \$250 or more within the past two years from an individual or an officer or director of a corporation or other business entity shall disclose the fact of the contribution and recuse themselves from participation in any matter pending before the board that involves the business entity or the individual.

j. Honoraria

Trustees shall comply with the provisions of the Public Official and Employee Ethics Act, Section 1103 (d) and as applicable, the Governor's Code of Conduct, Part 1, Paragraph 7, prohibiting the acceptance of Honoraria.

k. Travel and Incidental Reimbursements

Trustees should be reimbursed consistent with Commonwealth travel guidelines for expenses that meet the "actual," "reasonable" and "necessary" tests.

Actual expenses are those expenses that were paid by Trustees and not reimbursed by another entity.

Reasonable expenses include the costs of travel or supplies that enable the Trustee to achieve their objectives in an efficient, safe and cost-effective manner. Trustees should locate and secure accommodations at moderately priced hotels. Hotels generally may be chosen in part to facilitate efficient

conduct of business and to minimize daily travel time while at the business site, when reasonable costs are obtainable. Trustees attending conferences may stay at the hotel hosting the conference.

Necessary expenses are those that are required to achieve the goals of PSERS. With the communication methodologies available today, however, the need for travel should be carefully evaluated. When travel is deemed necessary, efforts should be made to keep the trip as short as possible.

I. Attendance at Functions

Trustees may accept invitations to seminars, conferences, educational meetings or other functions paid for by ~~Contractors~~ ~~any Person~~ that are not intended to promote a certain business relationship or product. Trustees should use reasonable care and judgment to avoid placing themselves in a situation that might cause, or be perceived to cause, a Conflict of Interest or a loss of independence or objectivity. ~~The acceptance of an infrequent meal as part of a legitimate business meeting or conference would not be considered a Conflict of Interest.~~

m. Use of Commonwealth Assets

Commonwealth property or resources should be used only to achieve the business purposes of the Commonwealth or PSERS and not for personal interest, pleasure or profit.

Certain exceptions are commonly made for items of nominal value, and as provided for in Commonwealth policies.

Trustees are required to diligently protect Commonwealth assets, including data, from theft or Waste.

n. Confidentiality

Although PSERS is a public entity that fosters accountability and transparency to its stakeholders and the general public, PSERS is also entrusted with confidential information including but not limited to:

- Nonpublic, individually identifiable information of its members and Employees,
- Privileged information developed through the attorney-client relationship or other legally recognized privileges,
- PSERS' security information,

- PSERS' specific investment transactions, or
- Protected Health Information as provided by the Health Insurance Portability and Accountability Act (HIPAA).

Trustees may not access, disclose, or use confidential information acquired in their positions without proper authorization or as may be required by applicable law.

Trustees shall not access, disclose, or use confidential information for any purpose other than in the performance of lawful PSERS duties and responsibilities.

Trustees shall not accept employment or engage in any business or professional activity that will require them to disclose confidential information that they have gained by reason of their official position with PSERS.

o. Criminal Conduct

No Trustee may engage in or condone any conduct that is in violation of a criminal law arising in the course of or from the performance of an official duty or function; including but not limited to, violations of law constituting misfeasance or malfeasance in office. No Trustee may engage in activities involving dishonesty, fraud, deceit or misrepresentation in connection with the performance of their official duties.

p. Investments

All Trustees are obligated to conduct their personal securities transactions in a manner that does not conflict with PSERS' business and their Fiduciary responsibilities, interfere with PSERS' portfolio transactions or create an actual or potential Conflict of Interest with PSERS. No Trustee shall become an endorser, surety, or obligor on, or have any personal interest, direct or indirect, in the making of any investment for the Board, or in the gains or profits accruing therefrom. Trustees shall not share insider information or use that information to benefit either themselves, PSERS or the Fund. Trustees are to place the interests of PSERS above their own, so that PSERS' execution of trades must take priority over personal trades.

q. Board Interaction with Outside Parties and PSERS Members

Communications with Contractors and Other Non-PSERS Persons and Entities:

A Trustee shall not correspond with a non-PSERS Person or entity using PSERS' letterhead unless the communication is authorized by the Board and processed through the Office of the Executive Director. The Office of the Executive Director shall make available a copy of all such written communications to all Trustees.

A copy of any written communication (other than purely personal or social correspondence, routine announcements, generally distributed newsletters, and the like) received by a Trustee from a current or potential Contractor, or Person related to a current Contractor, shall be forwarded to the Office of the Executive Director for subsequent distribution to all Trustees. Unless authorized by the Board, no Trustee shall disseminate or otherwise disclose any information obtained as a result of membership on the Board, which has not been released, announced, or otherwise made available publicly.

No Trustee may speak in an official capacity for PSERS and/or the Board without prior Board authorization. If a Trustee other than the authorized spokesman makes a statement without authorization, orally or in writing, the Trustee must explicitly acknowledge that it is not an authorized PSERS or Board statement.

A Trustee shall be respectful of the Board and its decisions in all external communications, even if he or she disagrees with such decision.

To mitigate the risk of miscommunication with PSERS members, Trustees will refrain from providing explicit advice or counsel, with respect to retirement plan provisions, policies or benefits, and will refer inquiries in this area to appropriate PSERS Employees through the Office of the Executive Director.

r. Board Oversight of PSERS' Management and Staff

(1) Collective Authority

The Board collectively is empowered to direct Employees on all matters of its operations. The orderly conduct of PSERS' operations requires that Board directives be implemented through the Office of the Executive Director. If the Board determines that the Office of the Executive Director's ability to faithfully serve PSERS' interests has been compromised, the Board may initiate corrective actions that temporarily circumvent the compromised individual(s) in the Office of the Executive Director.

(2) Individual Authority

Except as set forth in other policies of the Board, each Trustee shares in the Board's oversight responsibility, but may issue directives to Employees only in conjunction with the full Board or one of its committees.

Nothing in this Policy prohibits a Trustee from interacting with any Employees in a non-managerial function.

4. ADMINISTRATION OF POLICY

a. Ethics Policy Questions

Questions on this Policy should be referred to the Office of the Executive Director. Written opinions concerning the interpretation of this Policy will be provided to Trustees who file a written request. Copies of all opinions concerning a Trustee or the Office of the Executive Director will be furnished to the Board. All other opinions will be furnished to the Board upon its request. The Office of the Executive Director may use whatever resources are reasonably needed to provide the opinion. All Trustees may rely on such opinions to apply this Policy.

b. Training

Training with regard to this Policy will be given by the Office of the Executive Director within thirty days of election or appointment of new Trustees.

In addition to initial training, ethics updates will be communicated to all Trustees as needed.

Trustees will comply with the provisions of the Education Policy, paragraph V.A. Annual Training Program, regarding ethics training.

c. Addressing Conflicts of Interest

Trustees who become aware of a Conflict of Interest have an obligation to disclose that Conflict to the Office of the Executive Director through the Board Chair.

If either the Trustee or the Trustee's designee has a Conflict of Interest, both must recuse themselves from any action on the matter in which the Conflict exists.

d. Incident Reporting

The Board is responsible for governing the conduct of its individual Trustee members. In adopting this Policy, the Board seeks to promote the

orderly, ethical and professional resolution of disputes, as well as alleged Trustee misconduct.

Misconduct by a Trustee shall be addressed **in accordance with the Board's Fraud, Waste, and Abuse Reporting and Investigation Policy** by the full Board. Appropriate actions include, but are not limited to:

- resolving the matter within the current or future meetings of the Board,
- referring the matter to an existing or ad-hoc Board or agency committee for further action,
- appointing appropriate staff or outside Consultants for further action, or
- referring the matter to outside agencies, such as ~~the Office of the General Counsel~~, the State Ethics Commission or the Attorney General.

e. Enforcement

The Board is responsible for the enforcement of this Policy with respect to violations by individual Trustees through resolutions of reprimand, censure, or other appropriate parliamentary measures, including requests for resignation. Enforcement actions may include removing the offender from the position of Chair or Vice-Chair of the Board, or from any other assignment on behalf of the Board.

The Board may also pursue all of its legal remedies against any Trustee who violates the provisions of this Policy.

f. Assessment of Program- Internal Audit Department

An effective organizational ethics program should establish basic policies, regularly communicate them to Trustees, provide a means for Trustees to confidentially ask questions and express concerns, monitor transactions that are high risk, resolve any identified problems and make adjustments to both Policy and process as needed. As such, the Internal Audit Department will assess, every three years, the effectiveness of the Policy and recommend any needed revisions thereto.

A report on the assessment will be provided to the Board for consideration of recommended changes, if any.

g. Acknowledgement of Policy

All Trustees shall agree in writing to comply with this Policy at the commencement of their service with PSERS as a Trustee and annually thereafter. This acknowledgement will be kept on file with the Board Liaison. A copy of the required acknowledgement is attached as Exhibit A.

h. Effective Date

This Policy shall become effective July 1, 2010 and shall remain in effect until amended.

EXHIBIT A

Public School Employees' Retirement System
Ethics Policy

Acknowledgement

I hereby certify to the Chairman of the Board of Trustees of the Commonwealth of Pennsylvania Public School Employees' Retirement System that I have reviewed and understand the Ethics Policy of the Public School Employees' Retirement Board. I agree to comply with the provisions of the Policy, including the applicable statutes, rules, guidelines, and policies referred to and discussed within.

Name: _____

Date: _____

Signature: _____